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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**
10 **TACOMA DIVISION**

11 JEANETTE WICKERSHAM,

12 Plaintiff,

13 v.

14
15 PERFORMANT RECOVERY, INC.; and
16 DOES 1 to 10, inclusive,

17 Defendant.

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE FAIR DEBT COLLECTION
PRACTICES ACT ("FDCPA"),
WASHINGTON COLLECTION
AGENCY ACT ("WCAA") AND
WASHINGTON CONSUMER
PROTECTION ACT ("WCPA")**

JURY TRIAL DEMANDED

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20 **COMPLAINT AND DEMAND FOR JURY TRIAL**

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22 1. This is an action brought by Plaintiff, Jeanette Wickersham, (hereinafter "Plaintiff"), an
23 individual consumer, for actual and statutory damages, for injunctive relief to prevent further
24 harm to Plaintiff and to prevent future harm to other Washington consumers and debtors and to
25 prevent Defendant, Performant Recovery, Inc.'s future violations of the Fair Debt Collection
26 Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"), violations of the Washington
27 Collection Agency Act, RCW 19.16 *et seq.* (hereinafter "WCAA") and violation of the
28 Washington Consumer Protection Act (hereinafter "WCPA"), RCW 19.86 *et seq.*
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2. Plaintiff is Jeanette Wickersham, an adult individual whose principal residence is in Kitsap County, in the state of Washington.

3. Defendants are the following:

a. Upon information and belief, Defendant, Performant Recovery, Inc., is a corporation engaged in the business of collecting debt in this state and in several other states, with its principal place of business located at 333 North Canyons Parkway, Suite 100, Livermore, Alameda County, California 94551. The principal purpose of Defendant is the collection of debts in this state and several other states, and Defendant regularly attempts to collect debts alleged to be due another. Defendant Performant Recovery, Inc. is a “collection agency” or an “out-of-state collection agency” as defined by RCW § 19.16.100.

b. John Does 1-10, individuals or business entities whose identities are not known to Plaintiff at this time, but which will become known upon proper discovery. It is believed and averred that such Does played a substantial role in the commission of the acts described in this complaint.

JURISDICTION AND VENUE

4. The previous paragraphs of this complaint are incorporated by reference and made a part hereof.

5. Jurisdiction of this court arises under 15 U.S.C. §1692k(d), 28 U.S.C. § 1337, 28 U.S.C. § 1331, and/or 28 U.S.C. § 1367.

6. Venue is proper in this jurisdiction because Defendants transact business in this jurisdiction and availed themselves of the benefits of the market in this jurisdiction.

1 7. Venue is proper in this jurisdiction because the conduct complained of occurred in this
2 jurisdiction.

3 **FACTUAL ALLEGATIONS**

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5 8. The debt that Defendant is attempting to collect on is an alleged obligation of a
6 consumer to pay money arising out of a transaction in which the money, property, insurance or
7 services which are the subject of the transaction are primarily for personal, family, or household
8 purposes, whether or not such obligation has been reduced to judgment.
9

10 9. Within one (1) year preceding the date of this Complaint, Defendant, in connection with
11 the collection of the alleged debt, contacted Plaintiff and threatened to garnish Plaintiff's wages.

12 10. Defendant has no standing to commence garnishment proceedings on behalf of the
13 creditor.
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15 11. Defendant is a debt collection company and as a debt collection company attempting to
16 collect on an alleged debt, Defendant can only refer the matter back to the creditor with a
17 recommendation that the original creditor attempt legal proceedings which could result in
18 garnishment.
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20 12. The representations made to Plaintiff by Defendant regarding garnishment were false.
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22 13. The natural consequences of Defendant's statements and actions were to unjustly
23 condemn and vilify Plaintiff for her non-payment of the debt she allegedly owed.

24 14. The natural consequences of Defendant's statements and actions were to produce an
25 unpleasant and/or hostile situation between Defendant and Plaintiff.
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27 15. The natural consequences of Defendant's statements and actions were to cause Plaintiff
28 mental distress.
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16. Defendant utilized unfair and unconscionable means to collect on Plaintiff's alleged debt, by lying to and misleading Plaintiff.

**COUNT ONE: VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. § 1692**

17. The previous paragraphs of this complaint are incorporated by reference and made a part of this action.

18. Plaintiff is a consumer as defined by the Fair Debt Collections Practices Act (FDCPA), 15 U.S.C. 1692 et. seq.

19. At all relevant times in this Complaint, Defendants were acting as debt collectors as defined by the FDCPA, 15 U.S.C. § 1692a(6).

20. At all times mentioned herein, Defendants were attempting to collect on an alleged consumer debt against Plaintiff.

21. Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of an alleged debt; and
- b. Defendant violated §1692d(2) of the FDCPA by using obscene or profane language or language the natural consequences of which is to abuse the hearer or reader in connection with the collection of an alleged debt; and
- c. Defendant violated §1692e of the FDCPA by using a false, deceptive, or misleading representation or means in connection with the collection of the alleged debt; and

- 1 d. Defendant violated §1692e(4) of the FDCPA by giving the false representation or
2 implication that nonpayment of the alleged debt will result in the garnishment of
3 wages of any person when such action is unlawful and the Defendant does not
4 intend to take such action; and
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6 e. Defendant violated §1692e(5) of the FDCPA by threatening to take action that
7 the Defendant does not intend to take and/or the Defendant cannot legally take;
8 and
9
10 f. Defendant violated §1692e(10) of the FDCPA by using false representation or
11 deceptive means in connection with the collection the alleged debt; and
12
13 g. Defendant violated §1692f of the FDCPA by using unfair or unconscionable
14 means in connection with the collection of an alleged debt.

15 22. Defendant's acts as described above were done intentionally with the purpose of
16 coercing Plaintiff to pay the alleged debt.

17 23. As a result of the foregoing violations of the FDCPA, Defendant is liable to the Plaintiff,
18 Jeanette Wickersham, for actual damages, statutory damages, and costs and attorney fees.

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20 **COUNT TWO: VIOLATION OF THE WASHINGTON STATE COLLECTION**
21 **AGENCY ACT AND WASHINGTON CONSUMER PROTECTION ACT**
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23 24. The previous paragraphs of this complaint are incorporated by reference and made a part of
24 this action.

25 25. Defendant violated the WCAA, RCW 19.16 *et seq.* in the following ways:
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- 27 (a) Defendant violated RCW 19.16.250(8) by failing to disclose all information
28 required; and
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(b) Defendant violated RCW 19.16.250(13) by communicating with the Plaintiff in such a manner as to harass, intimidate, threaten, and/or embarrass Plaintiff; and

(c) Defendant violated RCW 19.16.250(16) by threatening to take legal action against the debtor which Defendant could not legally take at the time; and

(d) Defendant violated RCW 19.16.440 by operating a collection agency within the State of Washington without a license as prohibited by section 19.16.110 of the RCW, and thereby have employed unfair and deceptive trade practices under Chapter 19.86 of the RCW.

26. Defendant's acts as described above were done intentionally with the purpose of coercing plaintiff to pay the alleged debt.

27. Defendant has engaged in an act or practice prohibited by RCW 19.16.250 which are unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the WCPA, Chapter 19.86 RCW.

28. As a result of the foregoing violations of the WCAA and WCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, treble damages, and costs and attorney fees.

WHEREFORE, Plaintiff Jeanette Wickersham respectfully requests that judgment be entered against Defendant, Performant Recovery, Inc., for the following:

- A. An injunction preventing Defendants from ever again threatening to garnish Plaintiff's wages or bank account where Defendants have no legal right or standing to do so, pursuant to RCW 19.16.250, RCW 19.16.440 and RCW 19.86.090.

- 1 B. An injunction preventing Defendants from ever again threatening to garnish the wages
2 or bank account of any Washington debtor or consumer where Defendants have no legal
3 right or standing to do so, pursuant to RCW 19.16.250, RCW 19.86.440 and RCW
4 19.86.090.
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6 C. An injunction preventing Defendant, the owner of the underlying alleged debt, and any
7 other person who may hereafter legally seek to collect on the underlying claim from
8 ever being allowed to recover any interest, service charge, attorneys' fees,
9 collection costs, delinquency charge, or any other fees or charges otherwise legally
10 chargeable to the debtor on such claim, pursuant to RCW 19.16.250, RCW
11 19.16.440, RCW 19.16.450, and RCW 19.86.090.
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13 D. Actual damages pursuant to 15 U.S.C. § 1692k, RCW 19.16 *et seq.* and/or RCW 19.86
14 *et seq.*
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16 E. Statutory damages pursuant to 15 U.S.C. § 1692k, RCW 19.16 *et seq.* and/or RCW
17 19.86 *et seq.*
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19 F. Treble damages pursuant to RCW 19.86 *et seq.*
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21 G. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k, RCW 19.16 *et seq.*
22 and/or RCW 19.86 *et seq.*
23
24 H. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed
25 under the law.
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27 I. For such other and further relief as the Court may deem just and proper.

28 **DEMAND FOR JURY TRIAL**

29 Please take notice that Plaintiff, Jeanette Wickersham, demands trial by jury in this action.
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1 DATED: March 19, 2014

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